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April 26, 2023

VIA ECF and E-MAIL

The Honorable Analisa Torres
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007
Torres_NYSDChambers@nysd.uscourts.gov

Re: *Zonshayn v. Sackler School of Medicine, No. 1:21-cv-05720 (AT)*

Dear Judge Torres:

For Plaintiff David Zonshayn (“David”), we write in response to the Court’s Order dated April 12, 2023 (ECF 87), to inform the Court respectfully that David will not file an Amended Complaint.

David and his counsel read the Court’s opinion and order dated January 3, 2023 (ECF 85) as granting the Rule 12(b)(6) motion to dismiss, ruling that Title IX does not apply to foreign conduct, that the state breach of contract and promissory estoppel claims were subject to New York’s Article 78 standard of review that had not been pleaded, and that the remaining state law claims failed.

Given the Court’s ruling, we did not believe that an Amended Complaint made sense. We respectfully did not agree with the Court concerning Title IX. David was enrolled in the Sackler School of Medicine American/New York State Program that, according to paragraph 6b of the Second Amended Complaint, “advertises itself as a New York State accredited medical school” whose “graduates sit for the United States Medical Licensing Exam, partake in elective rotations in the United States and earn the MD degree, poising them to start their residency programs in the United States.” As a registered Program by New York regents, we believed and continue to believe that compliance with N.Y. Education Law Article 129-B has called for application of Title IX, especially since here,

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David was cleared of sexual harassment and will be graduating and that David's counter-complaint against his female accusers was not acted upon. That the Court nevertheless saw as dispositive that the complained of conduct occurred in Israel made, in our view, an attempted application of Article 78 for state claims a dubious proposition.

Respectfully submitted,
NESENOFF & MILTENBERG LLP
By: Philip A. Byler
Philip A. Byler, Esq.

cc: Edwin Baum, Esq., Perkins Coie

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